IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Welch
Application No.: 10/785,434 Art Unit.: 2456
Filed: 2/24/2004 Examiner: Keehn, Richard
For: DISTRIBUTED MONITORING IN A TELECOMMUNICATIONS SYSTEM

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
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REPLY BRIEF

Sir:

The Appellants herewith file a Reply Brief responsive to the Examiner's Answer mailed August 1, 2011 in the above identified matter. The Appellants presume no further fees are required for filing of this reply brief.

i. STATUS OF CLAIMS

Claims 1, 5-6, 8-11, 15-16 and 18-20 stand rejected and remain in the application for consideration on appeal. Claims 2-4, 7, 12-14 and 17 are cancelled.

ii. STATUS OF AMENDMENTS

No amendments have been filed since the response to the Office action mailed April 24, 2009.

iii. ARGUMENT

The Examiner's Answer on pages 4-11 reiterates the rejection from the final Office action. The Appellants have already addressed those arguments in the Appeal Brief. On pages 11-30 of the Examiner's Answer, the Examiner responds to the arguments put forth in the Appeal Brief. The Appellants will address these remarks from the Examiner.

Overview 10(1)

The Examiner first addresses the overview of claim 1 versus Bigus and El-Fekih provided by the Appellants. See pages 11-14. The Appellants provided the overview in the Appeal Brief to give the Board some context to the argument. Because this is the first time the Board has seen the pending claims and the cited art, it may be beneficial for the Board to have a high level overview of both. The Examiner tries to discount the overview of the Appellants, but the Appellants maintain that the cited art fails to teach multiple limitations of claim 1.

On page 12 of the Examiner's answer, the Examiner suggests that Bigus teaches "processes the performance file to compare its performance to the performance of the other peer communication devices" as recited in claim 1. The limitation actually reads "each of the peer communication devices, responsive to receipt of the performance file, processes the performance file to compare its performance to the performance of the other peer communication devices to detect a fault". However, the Appellants will address the portion pulled out by the Examiner. The Appellants made clear in the Appeal Brief that the system in Bigus uses a centralized server to monitor a network. Clients (e.g., computers) of the network collect metric data, and send the metric data to the centralized server (health monitoring server). The centralized server analyzes

the metric data to determine how the network is performing, and provides the results to a system administrator through a GUI. However, the Appellants point out that the centralized server in Bigus does not send a performance file **back to the clients**. The centralized server in Bigus provides a report to a system administrator through a GUI, but a performance file is not sent back to the clients that submitted the metric data. Because the centralized server in Bigus does not send a performance file back to the clients, it is not possible for the clients to process the performance file as suggested by the Examiner. See page 12 of the Examiner's answer. This is not possible because the clients in Bigus **never receive the performance file from the centralized server**.

The Examiner further argues on page 12 that the clients in Bigus compare their performance against a performance report because Bigus states that the embodiments may be implemented in a stand-alone computing system or a distributed computing system. See ¶ [0030] in Bigus. The Appellants are not sure what the point of the Examiner is, and do not find this argument persuasive. The Board can see that paragraph [0030] in Bigus is a boiler-plate paragraph that the Examiner is giving much weight. The embodiments in Bigus are for a health monitoring server that receives metric data from clients, analyses the metric data to generate a report, and provides the report to a system administrator through a GUI. According to paragraph [0030] in Bigus, the health monitoring server may be a distributed computing system. This means that the health monitoring server may be implemented on multiple computers (distributed) instead of on a single computer (stand-alone). It does not mean that the health monitoring server sends a performance file to the clients, and that each of the clients processes the performance file to compare its performance to the performance of the other peer communication devices. The health monitoring server in Bigus receives metric data from clients and provides a report to a system administrator. Regardless of whether the health monitoring server is implemented on a single computer or multiple computers, the clients will never receive a performance file to process. The report always goes to the system administrator through a GUI. Thus, each of the clients in Bigus **do not** have a performance file to process, and **are not** able to compare its performance to the performance of the other clients based on the performance file. Consequently, it is clear that Bigus fails to teach any part of the limitation of claim 1 that recites "each of the peer communication devices, responsive to receipt of the performance file, processes the performance file to compare its performance to the performance of the other peer

communication devices to detect a fault".

The Examiner further argues that El-Fekih teaches the limitation of "the control system … transfers the performance file to each of the peer communication devices" as recited in claim 1. See pages 13-14 of the Examiner's answer. This is simply incorrect. Network elements in El-Fekih send performance data to a service management system. The service management system analyzes the performance data to determine if a client is receiving the proper QoS, and provides the results to the client. For example, if the client is not receiving a high enough QoS from the network, then the report may indicate as such. But, the "client" in El-Fekih did not send performance data to the service management system. For example, assume that John Smith was the client that expected a certain QoS as a customer. In that example, John Smith did not send performance data to the service management system; a network element did. Therefore, John Smith cannot be considered a "peer communication device" as recited in claim 1.

Additionally, the Examiner has ignored the use of "the" in claim 1. Claim 1 recites:

> ***a*** *plurality of peer communication devices, where each peer communication device… transfers the performance data to the control system;*
>
> *the control system…transfers the performance file to each of* ***the*** *peer communication devices;*
>
> *each of* ***the*** *peer communication devices, responsive to receipt of the performance file, processes the performance file to compare its performance to the performance of the other peer communication devices to detect a fault;*

The Appellants have emphasized ***the*** peer communication devices in the limitations. This is to remind the Examiner and the Board that when the control system in claim 1 transfers the performance file to "each of the peer communication devices", it is not merely sending some file to some device. The control system in claim 1 is sending the performance file to each of ***the*** peer communication devices. ***The*** peer communication devices have already been defined in claim 1 as transferring performance data to the control system. Thus, in order for the cited art to teach the limitation of "the control system…transfers the performance file to each of ***the*** peer communication devices", the cited art must show a system that transfers a performance file to communication devices that sent performance data to the system. This does not occur in El-Fekih (or Bigus). The service management system in El-Fekih does not receive performance data from a client (e.g., John Smith), but instead receives performance data from network elements. At the same time, the service management system in El-Fekih does not send a

performance file to the network elements, but instead provides a report to the client (e.g., John Smith). Therefore, El-Fekih cannot teach a system that transfers a performance file to each of ***the*** peer communication devices as recited in claim 1, because the service management system in El-Fekih sends a report to **the client**. The client in El-Fekih cannot be considered one of ***the*** peer communication devices, because the client did not send performance data to the service management system (the network elements did).

A similar argument applies for the phrase "**the** performance file". The performance file is defined in claim 1 as indicating ***the performance of each of the peer communication devices***. El-Fekih never states that the report sent to the client indicates the performance of each of the peer communication devices. It appears in El-Fekih that the report would only be about the client and his/her QoS provided by the network. The Examiner cannot conveniently forget that ***the*** performance file is sent to each of the peer communication devices, where the performance file indicates the performance of each of the peer communication devices. If the Examiner relies on El-Fekih to teach the limitation of "the control system…transfers ***the*** performance file to each of ***the*** peer communication devices", clearly this is incorrect because the report in El-Fekih does not indicate the performance of each of the peer communication devices. The Examiner already said that Bigus fails to teach this limitation (see page 5 of the final OA), so clearly neither reference teaches this limitation of claim 1.

The Examiner keeps trying to make the cited art fit to claim 1, but the cited art simply does not teach the limitations recited in claim 1.

10(2) Argument A

The Examiner states that "Appellant argues that 'there is no performance file sent back to the clients in Bigus, and the clients are not available to detect their own internal faults based on a performance,' (Brief at 9)". See pages 14-15 of the Examiner's answer.

The Appellants maintain that neither Bigus nor El-Fekih teaches a control system that "transfers the performance file to each of the peer communication devices". Bigus describes a centralized server that provides a report to a system administrator through a GUI, but fails to describe the server sending a performance file to the clients that submitted the metric data to the centralized server. The Appellants also showed in the Appeal Brief and the remarks above that El-Fekih fails to teach a control system that transfers the performance file as recited in claim 1.

El-Fekih describes a system that receives performance data from network elements, and provides a report to a client (e.g., customer or service provider) about network performance. Because neither reference cited by the Examiner teaches a system that transfers a performance file to each of the peer communication devices as recited in claim 1, the combination of the cited references cannot teach this limitation.

One comment by the Examiner is that the Appellants address Bigus and El-Fekih at times when the Examiner did not rely on these references to reject certain limitations. See for example page 16 of the Examiner's answer. The Appellants view is that art was cited by the Examiner in rejecting these claims; Bigus and El-Fekih. The Appellants would like to show the Board that the cited art in combination does not teach limitations recited in the pending claims. Thus, the Appellants first addressed the art that was cited by the Examiner without regard to the specific rejection of the Examiner. The Appellants respectfully note that the way the Examiner has applied the cited art to the claims may be questionable to reasonable minds. Thus, the Board may not agree with the Examiner's rejection, but may still apply the cited art to the pending claims in a different way. The Appellants therefore addressed the cited art as it relates (or does not relate) to the pending claims without regard to the Examiner's rejection, and also addressed the cited art in view of the Examiner's rejection. The Appellants find this to be proper.

10(2) Argument B

The Examiner states "Appellant's argument against El-Fekih is that the client receiving the performance file is not the same client that sent performance data to the central controller. (Brief at 10)." See pages 16-18 of the Examiner's answer.

The Appellants maintain that the client receiving the report in El-Fekih is not the same as the network element that sent performance data to the service management system. That is clear. Also, the Appellants would like the Board to note that the service management system in El-Fekih does not send a "performance file" to the client. A performance file in claim 1 indicates the performance of each of the peer communication devices. The report in El-Fekih would only be for the client and his/her QoS provided by the network.

In the answer, the Examiner again states that El-Fekih was not used to reject the limitation where the peer communication devices transfer performance data to the control system. Therefore, it is irrelevant that El-Fekih fails to teach a system that provides a

performance file to the same clients that submitted performance data. The Appellants disagree.

As the Appellants explained above, when the control system in claim 1 transfers the performance file to "each of the peer communication devices", it is not merely sending some file to some device. The control system in claim 1 is sending the performance file to each of ***the*** peer communication devices. ***The*** peer communication devices have been defined in claim 1 as transferring performance data to the control system. Thus, in order for the cited art to teach the limitation of "the control system…transfers the performance file to each of ***the*** peer communication devices", the cited art must show a system that transfers the performance file to communication devices that sent performance data to the system. This does not occur in El-Fekih (or Bigus). The service management system in El-Fekih does not receive performance data from a client (e.g., John Smith), but instead receives performance data from network elements. At the same time, the service management system in El-Fekih does not send a performance file to the network elements, but instead provides a report to the client. Therefore, El-Fekih cannot teach a system that transfers a performance file to each of ***the*** peer communication devices as recited in claim 1, because the service management system in El-Fekih sends a report to **the client**. The client in El-Fekih cannot be considered one of ***the*** peer communication devices, because the client did not send performance data to the service management system (the network elements did).

The Examiner cannot ignore the language in the claim limitations with regard to each of ***the*** peer communication devices. The Examiner states that El-Fekih discusses the service management system providing a report to a client. And, the Examiner knows that the client did not provide performance data to the service management system. In his rejection, the Examiner has disregarded the use of the word "the" in the limitation of "the control system … transfers the performance file to each of ***the*** peer communication devices" (emphasis added). If the limitation read "transfers the performance file to ***a client***" or even "transfers the performance file to ***a device***", then the Examiner may have a point. But, claim 1 reads that "the control system … transfers the performance file to each of ***the*** peer communication devices" (emphasis added). At the risk of sounding redundant, ***the*** peer communication devices are defined as transferring performance data to the control system. In order for the Examiner to reject this limitation based on the service management system in El-Fekih sending a report to a client, the client in El-Fekih has to transfer performance data to the service management system. This does not occur in El-

Fekih, so the Examiner's argument is incorrect.

10(2) Argument C

The Examiner states "Appellant also argues that El-Fekih 'teaches away from distributed monitoring by having the service management system analyze the performance data.' (Brief at 10)". See pages 18-19 of the Examiner's answer.

The Appellants have no comment on this argument. The Appellants provided an overview of claim 1 and the cited art for the Board so that the differences between the two would be clear when the Appellants discussed individual limitations. The Examiner is trying to discount small portions of this overview. The Appellants stand by this statement as an overview of claim 1 and the cited art.

10(2) Argument D

The Examiner states "Appellant argues that 'neither reference describes that a centralized server aggregates the performance data from multiple devices into a performance file, and sends a performance file back to the devices that submitted the performance data in the first place.'(Brief at 11)." See pages 19-20 of the Examiner's answer.

The Appellants already showed that neither reference teaches the limitation of "the control system…transfers the performance file to each of ***the*** peer communication devices". Therefore, the combination of these references cannot teach this limitation. The Examiner's argument that the Appellants are arguing against the references individually is without merit. In order for the combination of references to teach the limitation of "the control system…transfers the performance file to each of ***the*** peer communication devices", one of the references has to teach a system that transfers the performance file to each of ***the*** peer communication devices. The Appellants showed that this does not occur in either Bigus or El-Fekih. The Appellants also showed that the Examiner's reliance on El-Fekih to teach this limitation is flawed. Therefore, the Appellants have properly argued against the cited art teaching this limitation.

10(2) Argument E

The Examiner states "Appellant correctly acknowledges that both 'Bigus and El-Fekih describe communication devices that submit performance data to a centralized server.' However,

Appellant goes on to argue that 'neither of these references describes the centralized server transferring a performance file back to each of the communication devices' (Brief at 9)". See pages 20-21 of the Examiner's answer.

The Appellants have already addressed this issue a number of times.

10(2) Argument F

The Examiner states "Appellant argues that the cited references fail to teach that 'each of the peer communication devices…processes the performance file to compare its performance to the performance of the other peer communication devices to detect a fault' and argues that 'El-Fekih is flawed because El-Fekih does not describe a centralized server that returns a performance file to communication device'(Brief at 12)." See pages 21-22 of the Examiner's answer.

The Appellants already showed that El-Fekih fails to teach "the control system…transfers the performance file to each of ***the*** peer communication devices". If no performance file is provided to "each of ***the*** peer communication devices", then "each of ***the*** peer communication devices" cannot process the performance file as in claim 1. Similarly, Bigus fails to teach a system that sends a performance file to each of ***the*** peer communication devices (as admitted by the Examiner). Because there is no performance file sent to each of ***the*** peer communication devices, Bigus cannot teach each of ***the*** peer communication devices processing a performance file as in claim 1.

Neither reference cited by the Examiner teaches a control system that transmits the performance file (indicating the performance of each of the peer communication devices) to each of the peer communication devices. Because the "peer communication devices" in the cited art do not receive the performance file from a control system, the "peer communication devices" cannot process the performance file.

10(2) Argument G

The Examiner states "Appellant also argues that El-Fekih 'do not have a performance file with which to compare its performance to the performance of the other peer communication devices to detect a fault. (Brief at 12)." See pages 22-23 of the Examiner's answer.

The Appellants have already addressed this issue multiple times that El-Fekih fails to

teach a system that transfers "the performance file" (indicating the performance of each of the peer communication devices) to each of the peer communication devices (that transferred performance data to the system).

10(2) Argument H

The Examiner states "Appellant argues that 'the centralized server does not send a performance file back to the network elements in El-Fekih as recited in claim 1'(Brief at 12)." See pages 23-25 of the Examiner's answer.

The Appellants have already addressed this issue multiple times.

10(2) Argument I

The Examiner states "Appellant argues that 'neither of the references teaches that a central server sends a performance file back to communication devices which submitted performance data to the server', and 'the client in El-Fekih is not equivalent to a 'peer communication device' (Brief at 13)." See pages 25-26 of the Examiner's answer.

The Appellants have already addressed this issue multiple times.

10(2) Argument J

The Examiner states "Appellant argues that '[I]n order to teach claim 1, the centralized server in El-Fekih would have to send a performance file back to the devices which submitted performance data, and these devices would have to detect a fault and perform a recovery action using the performance file.' (Brief at 13)." See pages 26-30 of the Examiner's answer.

The Appellants have already addressed this issue multiple times.

Conclusion

The Appellants ask the Board to find the present rejection insufficient, and allow the pending claims for at least the reasons provided above.

Respectfully submitted,

Date: **9-29-2011**

/BRETT BORNSEN/

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